

<p>176</p> <p>1 VOLUME 2</p> <p>2 IN THE UNITED STATES DISTRICT COURT</p> <p>3 FOR THE DISTRICT OF MARYLAND</p> <p>4 (Northern Division)</p> <p>5 -----X</p> <p>6 IN THE MATTER OF THE COMPLAINT:</p> <p>7 OF ETERNITY SHIPPING, LTD. AND:</p> <p>8 EUROCARRIERS, S.A. FOR : Civil Action</p> <p>9 EXONERATION FROM OR LIMITATION: No. L01CV0250</p> <p>10 OF LIABILITY :</p> <p>11 -----X</p> <p>12 Continued deposition of WILLEM SCHOONMADE, M.Sc.</p> <p>13 Baltimore, Maryland</p> <p>14 Friday, August 27, 2004</p> <p>15 8:30 a.m.</p> <p>16 Job No.: 1-39310</p> <p>17 Pages 176 - 468, Volume 2</p> <p>18 Reported by: Beatriz D. Fefel, RPR</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>178</p> <p>1 APPEARANCES</p> <p>2</p> <p>3 ON BEHALF OF TATE &amp; LYLE:</p> <p>4 JEFFREY J. ASPERGER, ESQUIRE</p> <p>5 ASPERGER CARAHER, L.L.C.</p> <p>6 303 East Wacker Drive</p> <p>7 Three Illinois Center, Suite 1000</p> <p>8 Chicago, Illinois 60601</p> <p>9 Telephone: (312) 856-9901</p> <p>10</p> <p>11</p> <p>12 ON BEHALF OF THE LIMITATION PLAINTIFFS,</p> <p>13 EUROCARRIERS, S.A., AND ETERNITY SHIPPING, LTD.:</p> <p>14 M. HAMILTON WHITMAN, JR., ESQUIRE</p> <p>15 ERIC M. VEIT, ESQUIRE</p> <p>16 OBER, KALER, GRIMES &amp; SHRIVER</p> <p>17 120 East Baltimore Street, 8th Floor</p> <p>18 Baltimore, Maryland 21202-1643</p> <p>19 Telephone: (410) 685-1120</p> <p>20</p> <p>21</p> <p>22</p>
<p>177</p> <p>1 Continued deposition of WILLEM SCHOONMADE,</p> <p>2 M.Sc., held at the law offices of:</p> <p>3</p> <p>4 OBER, KALER, GRIMES &amp; SHRIVER</p> <p>5 120 East Baltimore Street</p> <p>6 9th Floor, Severn Room East</p> <p>7 Baltimore, Maryland 21202-1643</p> <p>8 Telephone: (410) 685-1120</p> <p>9 Fax: (410) 547-0699</p> <p>10</p> <p>11</p> <p>12 Pursuant to agreement, before Beatriz D.</p> <p>13 Fefel, Registered Professional Reporter and Notary</p> <p>14 Public of the State of Maryland.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>179</p> <p>1 APPEARANCES (CONTINUED)</p> <p>2</p> <p>3 ON BEHALF OF AMERICAN BUREAU OF SHIPPING:</p> <p>4 ROBERT G. CLYNE, ESQUIRE</p> <p>5 JAMES A. SAVILLE, JR., ESQUIRE</p> <p>6 HILL, RIVKINS &amp; HAYDEN, L.L.P.</p> <p>7 45 Broadway</p> <p>8 Suite 1500</p> <p>9 New York, New York 10006-3739</p> <p>10 Telephone: (212) 669-0600</p> <p>11</p> <p>12</p> <p>13</p> <p>14 ALSO PRESENT: Kevin P. Hislop</p> <p>15 Donald Sayenga</p> <p>16</p> <p>17</p> <p>18</p>

EXHIBIT

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<p style="text-align: right;">372</p> <p>1 A It does, but I do not recall them at this</p> <p>2 moment in time. There is something that, that is</p> <p>3 written by every manufacturer, that you should call</p> <p>4 our representative, because that's just by economic --</p> <p>5 out of economic purposes, but --</p> <p>6 Q What economic purposes?</p> <p>7 A Well, sending out service engineers is</p> <p>8 income to a company.</p> <p>9 Q Okay. So you think that's the motivation</p> <p>10 for a manufacturer sending --</p> <p>11 A That is the motivation for manufacturers to</p> <p>12 put a little bit overdone recommendations in their</p> <p>13 manuals, yes.</p> <p>14 Q And that's your personal opinion, correct?</p> <p>15 A That's my personal opinion, yes.</p> <p>16 Q In other words, you're not going to offer</p> <p>17 any evidence at trial that that is in fact the basis</p> <p>18 upon which IHI put that term --</p> <p>19 A No.</p> <p>20 Q -- in its materials?</p> <p>21 A No, no, no.</p> <p>22 Q Thank you. So that's not an engineering</p>	<p style="text-align: right;">374</p> <p>1 crane was operating, yes.</p> <p>2 Q And that was obvious to anyone --</p> <p>3 A Yeah.</p> <p>4 Q -- correct?</p> <p>5 A Yes.</p> <p>6 Q And the Domino -- is it your understanding</p> <p>7 from the evidence that the Domino crane had been</p> <p>8 operating in hatch 6 before the ship's crew ever began</p> <p>9 its work with Crane No. 4?</p> <p>10 A Yes.</p> <p>11 Q And just from a visual standpoint of the</p> <p>12 location and attitude of the two booms of these</p> <p>13 cranes, with the No. 4 crane on the vessel at its</p> <p>14 highest boom-up position it would not actually be</p> <p>15 hanging over the Domino crane, correct?</p> <p>16 A No.</p> <p>17 Q In fact, it was located one hatch away,</p> <p>18 correct?</p> <p>19 A I don't know. I don't know whether it --</p> <p>20 they were operating in the same hold.</p> <p>21 Q That's not my question.</p> <p>22 A I know, I know.</p>
<p style="text-align: right;">373</p> <p>1 opinion, that's a personal opinion?</p> <p>2 MR. WHITMAN: Objection.</p> <p>3 A Yes.</p> <p>4 Q Opinion 6: Simultaneous operation -- I'm</p> <p>5 quoting. Simultaneous operation with both the deck</p> <p>6 crane and the gantry unloader in one hold is in</p> <p>7 general an unsafe operation. And you've cited several</p> <p>8 reasons for that, correct?</p> <p>9 A Yes, correct.</p> <p>10 Q Because if, if two cranes are working in too</p> <p>11 close a proximity the booms can come in contact with</p> <p>12 one another, correct?</p> <p>13 A Correct.</p> <p>14 Q Loads may come in contact with one another,</p> <p>15 correct?</p> <p>16 A Correct.</p> <p>17 Q Based upon your examination of this case, on</p> <p>18 the morning of this occurrence do you believe the</p> <p>19 ship's crew and officers knew that the Domino gantry</p> <p>20 crane had been operating in hold -- or, actually, in</p> <p>21 hatch 6?</p> <p>22 A The ship's crew was aware where the Domino</p>	<p style="text-align: right;">375</p> <p>1 Q There was hatch 6 and hatch 6A, correct?</p> <p>2 A I know.</p> <p>3 Q And which hatch was the Domino crane</p> <p>4 operating in at the time of the incident?</p> <p>5 A I do not recall at this moment. What I know</p> <p>6 is that they were working in the same hold.</p> <p>7 Q Do you also recognize they were operating in</p> <p>8 different hatches?</p> <p>9 A I do not know.</p> <p>10 Q Well, let me ask --</p> <p>11 A At this time I do not recall.</p> <p>12 Q Are you generally familiar with unloading</p> <p>13 operations such as this? Have you ever observed them</p> <p>14 before?</p> <p>15 A In student time I've even worked as a, as a,</p> <p>16 what you call, longshoreman.</p> <p>17 Q Okay. And I think you indicated earlier</p> <p>18 that the typical way for unloading is for the</p> <p>19 shoreside crane and clamshell bucket to be taken down</p> <p>20 into the center of the hatch, correct?</p> <p>21 A Correct.</p> <p>22 Q Away from any of the obstructions or</p>

<p style="text-align: right;">376</p> <p>1 coamings or edges?</p> <p>2 A Correct.</p> <p>3 Q Because that's the safe way to operate?</p> <p>4 A Sure.</p> <p>5 Q And the prudent way, right?</p> <p>6 A (Nodding.)</p> <p>7 Q And that bulldozers, at least in this</p> <p>8 instance, were used inside the hatch in order to push</p> <p>9 the bulk sugar to the center so it could be picked up</p> <p>10 by the clamshell bucket of the shoreside crane,</p> <p>11 correct?</p> <p>12 A Correct.</p> <p>13 Q Do you have any evidence that that wasn't</p> <p>14 what was happening in hatch 6 at the time of this</p> <p>15 incident?</p> <p>16 A No.</p> <p>17 Q And at the time of this incident is it also</p> <p>18 your understanding that Crane No. 4 was operated or</p> <p>19 slewed as far aft in hatch 6A as it could possibly go?</p> <p>20 A Yes.</p> <p>21 Q So if that's the case, if that's true and if</p> <p>22 the evidence and the facts and the photographs and</p>	<p style="text-align: right;">378</p> <p>1 A No. Maybe I can quote a page from my notes.</p> <p>2 (Witness reviewing document.)</p> <p>3 Q And while you're looking, can I ask you just</p> <p>4 a clarifying question? Have you seen any written</p> <p>5 Domino policy?</p> <p>6 A There's no written policy. Mr. Baker</p> <p>7 testified that it was policy, but not written.</p> <p>8 Q Okay. I'd like to know --</p> <p>9 A In his deposition?</p> <p>10 Q Yeah.</p> <p>11 A No, I don't have nothing.</p> <p>12 Q Okay. Do you know for certain whether</p> <p>13 Mr. Baker said that it was policy to operate one hold</p> <p>14 away or one hatch away?</p> <p>15 A I have to check that in his deposition.</p> <p>16 Q All right. So you don't know?</p> <p>17 A I don't know at this moment.</p> <p>18 Q Would you agree that --</p> <p>19 A I don't recall.</p> <p>20 Q Okay. I'm sorry. I didn't know you hadn't</p> <p>21 finished.</p> <p>22 A I do not recall.</p>
<p style="text-align: right;">377</p> <p>1 everything indicate that, then Crane No. 4 would have</p> <p>2 been operating more than one hatch away from the</p> <p>3 Domino crane?</p> <p>4 MR. CLYNE: Objection.</p> <p>5 MR. WHITMAN: Objection.</p> <p>6 Q Correct?</p> <p>7 A You mean center to center? Yes.</p> <p>8 Q Yes.</p> <p>9 A Yes, correct.</p> <p>10 Q Thank you.</p> <p>11 All right. You say in Paragraph No. 4 under</p> <p>12 Opinion 6: This type of operation violates Domino</p> <p>13 policy as developed over many years of operations as</p> <p>14 testified by Mr. Baker in his deposition.</p> <p>15 A Yes.</p> <p>16 Q I'd like you to point out what testimony</p> <p>17 you're relying upon to make that statement.</p> <p>18 MR. CLYNE: Do you have the transcript with</p> <p>19 you?</p> <p>20 MR. ASPERGER: I don't.</p> <p>21 MR. CLYNE: No, we don't have the transcript</p> <p>22 here.</p>	<p style="text-align: right;">379</p> <p>1 Q Fine. If Mr. Baker said one hatch away,</p> <p>2 then your statement would not be correct; is that</p> <p>3 true?</p> <p>4 MR. CLYNE: Objection.</p> <p>5 A My opinion is based on the relative</p> <p>6 position, and if that crane is working one hatch away</p> <p>7 and if that means less than a boom length, it's still</p> <p>8 too near and it's still basically unsafe.</p> <p>9 Q That's not my question.</p> <p>10 A No?</p> <p>11 Q You said in the basis of this opinion that</p> <p>12 you're relying upon the statement or testimony of</p> <p>13 Mr. Baker in his deposition; isn't that correct?</p> <p>14 A Among other things, I rely on Mr. Baker's</p> <p>15 deposition.</p> <p>16 Q Where does it say in the basis for your</p> <p>17 opinion "among other things"?</p> <p>18 A Basis one is the risk of an accident caused</p> <p>19 by collision of the booms or other parts, and that is</p> <p>20 not related to one hold, that's related --</p> <p>21 Q I'm focusing on one --</p> <p>22 A -- to the vicinity.</p>

<p style="text-align: right;">380</p> <p>1 Q I don't --</p> <p>2 MR. WHITMAN: Mr. Asperger, please let him</p> <p>3 finish.</p> <p>4 MR. ASPERGER: I don't -- well, just a</p> <p>5 second. Bob, I don't -- I don't want to fight with</p> <p>6 you on this.</p> <p>7 Q I'm asking you about one sentence in your</p> <p>8 report, okay? I'm only asking you about the first</p> <p>9 sentence in Paragraph 4. That's the only one, not</p> <p>10 about anything else in that opinion or any other</p> <p>11 basis.</p> <p>12 I'm simply asking you if Mr. Baker said that</p> <p>13 it was the policy to operate one hatch away, this</p> <p>14 statement that you made of Domino policy would not</p> <p>15 accurately state their policy; is that correct?</p> <p>16 MR. CLYNE: Objection.</p> <p>17 A <b>That's correct.</b></p> <p>18 Q Thank you. That's all.</p> <p>19 You then say: Domino should not have</p> <p>20 continued their - I think you mean "its" - operation</p> <p>21 under these circumstances. Did I quote that</p> <p>22 accurately?</p>	<p style="text-align: right;">382</p> <p>1 know or I can't find it or I don't have it or I'm not</p> <p>2 certain, whatever. Okay? That's all I'm asking for.</p> <p>3 A <b>Okay.</b></p> <p>4 Q All right. My question is what evidence</p> <p>5 have you relied upon in this case to make the</p> <p>6 statement -- or to come to your conclusion that the</p> <p>7 ship's crane was operating in other places of Hold No.</p> <p>8 6A -- Hatch No. 6A on the morning of this event other</p> <p>9 than the aft port side and aft corner of hatch 6A?</p> <p>10 MR. CLYNE: Objection.</p> <p>11 MR. WHITMAN: Different question.</p> <p>12 Objection.</p> <p>13 A <b>Sorry. I, I do not recall.</b></p> <p>14 Q Okay. Is it your opinion that if this was</p> <p>15 an unsafe practice, that the ship's crew should have</p> <p>16 ceased operating Crane No. 4 in hatch 6A?</p> <p>17 A <b>In general it is an unsafe operation, and if</b></p> <p>18 <b>two parties are conducting together an unsafe</b></p> <p>19 <b>operation, it is ended if one of the parties ends it.</b></p> <p>20 <b>But it is Domino policy, be it not written policy, to</b></p> <p>21 <b>not operate two cranes in one hold. So if for some</b></p> <p>22 <b>reason it's carried on, then you violate your own</b></p>
<p style="text-align: right;">381</p> <p>1 A <b>You do.</b></p> <p>2 Q Okay. And if Domino was operating in hatch</p> <p>3 6 before the ship's crew began working Crane No. 4 at</p> <p>4 the aft section of crane (sic) 6A, why would Domino</p> <p>5 have the burden of discontinuing its operation?</p> <p>6 MR. WHITMAN: Objection.</p> <p>7 A <b>One thing is they did not work the whole</b></p> <p>8 <b>time at the aft end of hatch 6A. But apart from</b></p> <p>9 <b>that --</b></p> <p>10 Q Where did they work besides at the aft end</p> <p>11 of hatch 6A on this morning?</p> <p>12 A <b>The crane was slewed to reach another part</b></p> <p>13 <b>of the aft. But --</b></p> <p>14 Q Where is the evidence that supports that</p> <p>15 statement? And, again, I'm not meaning to fight with</p> <p>16 you. I just need to know, Mr. Schoonmade, exactly</p> <p>17 what it is you're relying upon. I need to know</p> <p>18 whether you're relying upon evidence, testimony,</p> <p>19 photographs, whatever you have, I need to know that.</p> <p>20 Okay?</p> <p>21 A <b>Yes, sir.</b></p> <p>22 Q If you don't know, you can tell me I don't</p>	<p style="text-align: right;">383</p> <p>1 <b>policy if you continue.</b></p> <p>2 Q Right. Here's what I want you to do, if you</p> <p>3 don't mind, so we can move on. I need to have the</p> <p>4 quote or testimony that you're relying upon that says</p> <p>5 that it was Domino policy not to operate in the same</p> <p>6 hold, okay, as opposed to the same hatch. Do you</p> <p>7 understand the distinction?</p> <p>8 A <b>Yup.</b></p> <p>9 Q So after the deposition today, if you would</p> <p>10 provide Mr. Clyne with that evidence that you rely</p> <p>11 upon so that he can send it to me and we can move on.</p> <p>12 Will you do that?</p> <p>13 A <b>I would like to come back on what I earlier</b></p> <p>14 <b>said.</b></p> <p>15 Q All right. Now, you've been handed</p> <p>16 something by your attorney, correct?</p> <p>17 A <b>Correct.</b></p> <p>18 Q What have you been handed?</p> <p>19 A <b>The Coast Guard report earlier referred to.</b></p> <p>20 Q Okay. And where in the report are you</p> <p>21 referring?</p> <p>22 A <b>I'm referring to Page EC000 --</b></p>



<p style="text-align: right;">384</p> <p>1 Q I don't have those pages, so just give me --</p> <p>2 MR. CLYNE: Give him the paragraph number.</p> <p>3 A Paragraph No. 8.</p> <p>4 Q Paragraph 8, toward the front of the -- is</p> <p>5 it this page, sir (exhibiting)?</p> <p>6 A Yeah.</p> <p>7 Q Thank you. Okay. Paragraph 8.</p> <p>8 A On the morning of July 29th, two crew</p> <p>9 members, Mr. Juan Gonzales, Jr., and Mr. Joselito</p> <p>10 Burgos, were hoisted in a workbasket by Crane No. 4</p> <p>11 and began scraping the sugar of the port coaming of</p> <p>12 hatch 6A.</p> <p>13 Q And why are you directing my attention to</p> <p>14 that paragraph?</p> <p>15 A Because five minutes ago when I said they</p> <p>16 did not work only on the aft coaming, you asked me</p> <p>17 where do you find that evidence. I did not recall</p> <p>18 then, and I was helped by my counsel. I found it on</p> <p>19 Page --</p> <p>20 Q And where does --</p> <p>21 A -- Bates No. EC000010, Paragraph No. 8 --</p> <p>22 Q Where is --</p>	<p style="text-align: right;">386</p> <p>1 A No.</p> <p>2 Q Does the Coast Guard report say where the</p> <p>3 ship's crew began scraping on the port coaming --</p> <p>4 A No.</p> <p>5 Q -- of hatch 6A that morning?</p> <p>6 A No.</p> <p>7 Q By the way, the Coast Guard report refers to</p> <p>8 hatch 6A, correct, not hold?</p> <p>9 A They refer to hatch 6A, correct.</p> <p>10 Q Is there any place, any documents, any</p> <p>11 testimony that you're relying upon that identifies</p> <p>12 where on the port coaming of hatch 6A these men were</p> <p>13 working on the morning of July 29th, 2000?</p> <p>14 A Not that I know of now.</p> <p>15 Q And if you find something, you'll provide it</p> <p>16 or give a citation to counsel to provide it to me; is</p> <p>17 that fair?</p> <p>18 A That's correct.</p> <p>19 Q Thank you.</p> <p>20 And if in fact this is an unsafe practice as</p> <p>21 you opine that it is, that is, operating a crane in</p> <p>22 hatch 6A while the Domino crane is being operated in</p>
<p style="text-align: right;">385</p> <p>1 A -- which I just read.</p> <p>2 Q I'm sorry. Tell me when you're finished.</p> <p>3 A When I stop. Sometimes I have to think.</p> <p>4 Q That's okay. Just -- you know, if you</p> <p>5 intend to go on, just let me know and I'll wait.</p> <p>6 A Okay.</p> <p>7 Q I'm not sure every time you stop whether</p> <p>8 you're finished with your thought or your testimony or</p> <p>9 not, so just tell me.</p> <p>10 A Do you want me to say "full stop" when I</p> <p>11 really stop?</p> <p>12 Q No.</p> <p>13 A Okay. Thank you.</p> <p>14 Q But please bear with me, then, and be</p> <p>15 patient, because sometimes when you stop, then I think</p> <p>16 that you've finished.</p> <p>17 A Also Mr. Balita testified that, that they</p> <p>18 started scraping in the port side.</p> <p>19 MR. CLYNE: Referring to --</p> <p>20 A Referring to No. 8, Exhibit No. 8.</p> <p>21 Q Does Mr. Balita say where on the port side</p> <p>22 they started scraping that morning?</p>	<p style="text-align: right;">387</p> <p>1 hatch 6, would there be any duty or obligation on the</p> <p>2 part of the ship's crew not to engage in that</p> <p>3 practice, and the ship's officers?</p> <p>4 A I would say yes. I earlier said that when</p> <p>5 an unsafe operation is carried out by two parties,</p> <p>6 they both have their responsibilities.</p> <p>7 Q Thank you. I just wanted to clarify that</p> <p>8 point.</p> <p>9 All right. You say in Opinion 7, which</p> <p>10 relates to maintenance, and I quote: Proper</p> <p>11 maintenance of any crane is paramount to a safe</p> <p>12 working life of the crane. The IHI instruction manual</p> <p>13 as on board gives clear instructions. However,</p> <p>14 maintenance of the LEON 1 deck crane seems to have</p> <p>15 been substandard in some aspects.</p> <p>16 Would you explain what aspects you're</p> <p>17 referencing?</p> <p>18 A My Basis No. 1, Mr. Warlinski is complaining</p> <p>19 about spare parts and adjustments and repairs, motors</p> <p>20 malfunctioning. He has a lot of electrical problems.</p> <p>21 Q All right. The second -- anything else that</p> <p>22 Mr. -- did you read Mr. Warlinski's deposition?</p>